

CHAPTER NO. 138

HOUSE BILL NO. 3615

By Representative Buck

Substituted for: Senate Bill No. 3524

By Senator Beavers

AN ACT to authorize Macon County to levy and collect a development/impact fee.

WHEREAS, Macon County, Tennessee, has been growing at an accelerated rate during the last few years; and

WHEREAS, the population of Macon County grew twenty-six percent (26%) from 1990 to 2000; and

WHEREAS, such anticipated growth is expected to continue and accelerate; and

WHEREAS, at this projected growth rate the population will increase from 31,000 to over 35,000 by 2020; and

WHEREAS, the County's present revenue raising authority is limited by state legislation and relies heavily on intergovernmental transfers which are not subject to County control, and on property taxes, which would impose the cost of new growth on existing residents rather than on new residents and businesses who create the demand for the additional expenditures; and

WHEREAS, Macon County is committed, for the benefit of both present and future County residents, to maintaining a level of public facilities and services commensurate with those presently provided; and

WHEREAS, Macon County is prepared to impose a fair, equitable and reasonable share of the costs of providing the necessary public facilities and services on existing residents of the County; and

WHEREAS, the County's present population, employment base, tax base and budget cannot alone support the additional revenues needed to supply facilities to serve new growth without a substantial increase in the property tax rate on existing development; and

WHEREAS, due to these circumstances, it is necessary and appropriate that Macon County be given authorization to extend its power for raising revenue to enable the County to impose a fair and reasonable share of the costs of public facilities necessitated by new residential and commercial development on such new development so as not to create an unfair and inequitable burden on existing county residents; and

WHEREAS, there is precedent in the State of Tennessee for such additional revenue measures to impose costs on those who benefit the most from improvements and where the result would otherwise be to impose an unfair burden on existing residents; and

WHEREAS, the most logical and effective mechanism to accomplish the intended result would be the imposition of a fee on new residential and commercial development in Macon County to be known as a development/impact fee; now, therefore,

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF TENNESSEE:

SECTION 1. This act shall be known and may be cited as the "Macon County Development/Impact Fee."

SECTION 2. As used in this act, unless a different meaning clearly appears from the context:

(a) "Board of Zoning Appeals" means the Board established in Macon County pursuant to Tennessee Code Annotated, Section 13-7-106.

(b) "Building" means any structure built for the support, shelter, or enclosure of persons, chattels, or movable property of any kind; the term includes a mobile home.

(c) "Building Inspector" means the person designated by resolution of the governing body of Macon County, who shall be responsible for ensuring a building or structure does not exceed the square footage paid for at the time of obtaining a certificate of occupancy/certificate of compliance.

(d) "Building Permit" means a permit for development issued in Macon County, whether by the county or any city therein.

(e) "Capital Improvement Program" means a proposed schedule of future projects, listed in order of construction priority, together with cost estimates and the anticipated means of financing each project. All major projects requiring the expenditure of public funds, over and above the annual local government operating expenses, for the purchase, construction, or replacement of the physical assets of the community are included.

(f) "Certificate of Occupancy/Certificate of Compliance" means a license issued for occupancy of a building or structure issued in Macon County, whether issued by the county or any city therein.

(g) "Commercial" means the development of any property for commercial use, except as may be exempted by this act.

(h) "Development" means the construction, building, erection, or improvement to land providing a new building or structure, which provides floor area for residential or commercial use.

(i) "Dwelling Unit" means a room or rooms, connected together, constituting a separate, independent housekeeping establishment for owner occupancy, rental, or lease, on a daily, weekly, monthly, or long-term basis; physically separated from any other room or rooms or dwelling units which may be in the same structure; and containing independent cooking and sleeping facilities.

(j) "Floor Area" means the total of the gross horizontal area of all floors, including basements, cellars, or attics, which is heated and/or air conditioned living space, or designed to be finished into heated and/or air conditioned living space at a future date.

(k) "General Plan" means the land use and transportation plan in effect in Macon County adopted December 2001.

(l) "Governing Body" means the County Commission of Macon County, Tennessee.

(m) "Nonresidential" means the development of any property for any use other than residential use, except as may be exempted by this act.

(n) "Person" means any individual, firm, co-partnership, joint venture, association, corporation, estate, trust, business trust, receiver, syndicate, or other group or combination acting as a unit, in the plural as well as the singular number.

(o) "Place of Worship" means that portion of a building, owned by a religious institution which has tax-exempt status, which is used for worship services and related functions; provided, however, that a place of worship does not include buildings or portions of buildings which are used for purposes other than for worship and related functions or which are or are intended to be leased, rented, or used by persons who do not have tax-exempt status.

(p) "Public Building" means a building owned by the state of Tennessee or any agency thereof, a political subdivision of the state of Tennessee, including, but not necessarily limited to, counties, cities, school districts, and special districts, or the federal government or any agency thereof.

(q) "Public Facility or Facilities" means a physical improvement undertaken by the county or city, including, but not limited to, the following: roads and bridges, parks and recreational facilities, jails and law enforcement facilities, schools, libraries, government buildings, fire stations, sanitary landfills, water, wastewater and drainage projects, airport facilities, and any other governmental capital improvement benefiting the citizens of the county and/or city as defined in Tennessee Code Annotated, Section 9-21-105(21)(A) and/or (B).

(r) "Residential" means the development of any property for a dwelling unit or units.

(s) "Subdivision Regulations" means the regulations adopted by the Macon County Regional Planning Commission pursuant to state statutory authorization which went into effect in July, 1998, by which the county regulates the subdivision of land.

(t) "Zoning Resolution" means the resolution adopted by the governing body pursuant to the state statutory authorization which went into effect in August, 2002, as amended, by which the county regulates the zoning, use, and development of property.

SECTION 3. It is the intent and purpose of this act to authorize Macon County to impose a development/impact fee on new development in the county, payable at the time of issuance of a building permit, or certificate of occupancy, so as to ensure and require that the persons responsible for new development share in the burdens of growth by paying their fair share for the cost of new and expanded public facilities made necessary by such development.

SECTION 4. Engaging in the act of new development in Macon County, except as provided in Section 6 herein, is declared to be a privilege upon which Macon County may, by resolution of the governing body of Macon County, levy a development/impact fee at the rate set forth in Section 7.

SECTION 5. The governing body shall, by resolution, adopt administrative guidelines, procedures, regulations, and forms necessary to properly implement, administer, and enforce the provisions of this act.

SECTION 6. This act shall not apply to development of:

- (a) Public buildings;
- (b) Places of worship;
- (c) Barns, outbuildings, or accessory structures used for agricultural or residential purposes;
- (d) Replacement structures for previously existing structures destroyed by fire or other disasters; but only if replaced within one (1) year of the loss;
- (e) A structure owned by a nonprofit organization that is a qualified 501(c)(3) corporation under the Internal Revenue Code;
- (f) A permanent residential structure replacing a single-wide or double-wide mobile home on the same parcel when the mobile home is removed within thirty (30) days of the issuance of the certificate of occupancy for the permanent residential structure, providing that the permanent structure is a residence for the owner and occupant of the mobile home; or
- (g) A double-wide mobile home replacing a single-wide mobile home on the same parcel where the single-wide mobile home is removed within thirty (30) days of the issuance of the certificate of occupancy for the double-wide mobile home, providing that the double-wide mobile home is a residence for the owner and occupant of the single-wide mobile home.

SECTION 7.

(a) There is hereby imposed a development/impact fee on new development in the amount of one dollar (\$1.00) per square foot of floor area of new residential development. The amount of this fee may be increased or decreased by resolution of the governing body of Macon County, Tennessee, to be approved by no less than a two-thirds (2/3) vote of the governing body of Macon County, Tennessee.

(b) The authority to levy a development/impact fee on new commercial development is hereby authorized in the amount of twenty-five cents (25¢) per square foot of floor area of new commercial development. However, this fee may not be collected unless a resolution establishing the fee is approved by no less than a two-thirds (2/3) vote of the governing body of Macon County, Tennessee. The amount of this fee may be increased or decreased by resolution of the governing body of Macon County, Tennessee, to be approved by no less than a two-thirds (2/3) vote of the governing body of Macon County, Tennessee.

SECTION 8. The development/impact fee established in this act shall be collected at the time of application for a building permit for development as herein defined or, if a building permit is not required, at the time of application for a certificate of occupancy by the county or city official duly authorized in such jurisdiction to issue building permits or certificates of occupancy. The revenue collected from this fee shall be collected by the county building official, or other responsible official, and the proceeds

deposited with the County Trustee and used exclusively for capital projects, including but not limited to, debt service related to such service or projects, general fund, school fund, special revenue funds, debt service funds, or other capital project funds as designated by resolution of the Board of County Commissioners of Macon County. If the building permit or certificate of occupancy is issued by a city, the city shall, before issuance of the building permit, require evidence by a valid certificate executed by the county building inspector that the full amount of the fee due the county is paid. No building permit for development as herein defined, or certificate of occupancy if no building permit is required, shall be issued in Macon County, unless the fee has been paid in full to the county. The issuance of a building permit by any city official, without a certificate from the county that the fee has been paid, shall render the city liable to the county for the sum or sums, that would have been collected by the county had the city obtained such a certificate from the county indicating that the fee had been paid.

SECTION 9. The authority to impose the development/impact fee on new development in Macon County is in addition to all other authority to impose taxes, fees, assessments, or other revenue-raising or land-development regulatory measures granted either by the private or public acts of the state of Tennessee and the imposition of such a fee, in addition to any other authorized taxes, fees assessments, or charges, shall not be deemed to constitute double taxation.

SECTION 10.

(a) Any person aggrieved by the decision of the county building official or other responsible official concerning any aspect of this act may obtain review of the official's decision in the following manner:

(1) By payment of the disputed amount to Macon County and by notifying the official that the payment is made under protest; and

(2) By requesting an appeal of the decision of the official in written form within ten (10) days of the protest and payment.

(b) The Macon County Board of Zoning Appeals shall hear all appeals. Hearings shall be scheduled within thirty (30) days of the request for appeal, or at the next regular meeting of the Board of Zoning Appeals, whichever is later.

(c) The Board of Zoning Appeals shall render a decision on all appeals within thirty (30) days of the hearing date, unless the hearing is continued from time to time with a majority vote of the Board for further information.

(d) The Board of Zoning Appeals shall act as a quasi-judicial body, whose purpose is to determine the intent of this act, its applicability to the appellant, and to rule upon the interpretation of the official. The Board shall not be bound by formal rules of evidence applicable to the various courts of the state.

(e) Hearings before the Board shall proceed as follows:

(1) The county building official shall explain his or her ruling and the reasons for the ruling.

(2) The appellant shall explain his or her reasons for appealing the ruling.

(3) The Board may request further information from any county official, including, but not limited to the County Executive, County

Commissioners, Committee members, the County Attorney, or the County planning staff. The Board shall not have the power of subpoena.

(f) The Board shall deliberate and render a decision by a majority vote. Decisions shall be reduced to writing, and copies shall be sent to all parties and shall become a part of the minutes of the Board. Decisions of the Board of Zoning Appeals shall be final, except that either the building official or the person aggrieved may seek review of the Board's action by certiorari and supersedeas to the Chancery Court of Macon County, Tennessee, provided, that an application to the court is made within sixty (60) days of the written decision of the Board.

SECTION 11. All fees collected under the provisions of this act shall be used for the purpose of providing public facilities, the need for which is reasonably related to new development.

SECTION 12. The provisions of this act shall in no manner repeal, modify, or interfere with the authority granted by any other public or private law applicable to Macon County. This act shall be deemed to create an additional and alternative instrument for Macon County to impose and collect fees for the purpose of providing public facilities made necessary by new development in the county and/or any of its cities.

SECTION 13. If any provision of this act or the application thereof to any person or circumstances is held invalid, such invalidity shall not affect other provisions or applications of the act which can be given effect without the invalid provision or application, and to that end the provisions of this act are declared to be severable.

SECTION 14. This act shall have no effect unless it is approved by two-thirds (2/3) vote of the county legislative body of Macon County. Its approval or nonapproval shall be proclaimed by the presiding officer of the county legislative body and certified by such officer to the secretary of state.

SECTION 15. For the purpose of approving or rejecting the provisions of this act, it shall be effective upon becoming a law, the public welfare requiring it. For all other purposes, it shall become effective upon being approved as provided in Section 14.

PASSED: May 19, 2004


JIMMY RAIFEH, SPEAKER
HOUSE OF REPRESENTATIVES


JOHN S. WILDER
SPEAKER OF THE SENATE

APPROVED this 8th day of July 2004


PHIL BREDEZEN, GOVERNOR